

This letter rescinds letter rulings 91-0212, 91-0671, and 94-0186 due to an amendment to 86 Ill. Adm. Code 130.2105. Due to this amendment, electronic downloads of mailing lists to the extent they constitute only the electronic transfer of data are no longer considered tangible personal property subject to tax. (This is a PLR).

December 6, 2001

Dear Xxxxx:

This Private Letter Ruling, issued pursuant to 2 Ill. Adm. Code 1200, is being sent to rescind, in part (as explained below), Private Letter Rulings 91-0212, 91-0671, and 94-0186 previously sent to you on March 21, 1991, August 28, 1991, and June 10, 1994, respectively. Please be advised that the Taxpayers' Bill of Rights extends specific rights to taxpayers. Section 4(c) of the Taxpayers' Bill of Rights directs the Department to abate taxes and penalties assessed based upon erroneous written information or advice given by the Department. Consequently, you will not incur tax liability as a result of your reliance upon the specific provisions of our prior correspondence. However, upon your receipt of this Private Letter Ruling, the provisions of this Private Ruling shall become binding.

The letters involved regarded electronic transfers of databases to licensees (mailing lists). The letters did not describe the electronic downloads in detail. To the extent that these downloads constituted downloads of data only, such downloads are nontaxable transfers of intangibles under Section 130.2105, as amended, effective May 8, 2001. Software transfers, however, remain taxable even when downloaded electronically.

The Department recently amended 86 Ill. Adm. Code 130.2105 to read, in part, as follows:

Information or data that is downloaded electronically, such as downloaded books, musical recordings, newspapers or magazines, does not constitute the transfer of tangible personal property. These types of transactions represent the transfer of intangibles and are thus not subject to Retailers' Occupation and Use Tax. However, downloads of canned software, as defined more fully in Section 130.1935 of this Part, are subject to Retailers' Occupation and Use Tax.

We have attached a copy of the First Notice for these regulations, which explains the background of this rulemaking and specifically rescinds a number of letter rulings (one of which is ST-91-0212).

As the rule indicates, those portions of the Department's letters stating that the electronic transfer of information or data constitutes a sale of software are hereby rescinded. Software transfers remain subject to tax, however.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk